



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

TWELVE OAKS MEDICAL CENTER  
c/o HOLLOWAY & GUMBERT  
3701 KIRBY DRIVE SUITE 1288  
HOUSTON TX 77098-3926

#### **Carrier's Austin Representative Box**

47

#### **MFDR Date Received**

AUGUST 14, 2006

#### **Respondent Name**

AMERICAN CASUALTY CO OF READING PA

#### **MFDR Tracking Number**

M4-06-7477-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated August 11, 2006:** "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...Therefore, the fees paid by CAN Insurance Company do not conform to the reimbursement section of Rule 134.401."

**Affidavit of Darlene Crawford dated July 27, 2006:** "...Business Office Director for Twelve Oaks Medical Center...The services provided were necessary for the treatment of a workplace injury and the amounts charges for the goods and services provided to [Claimant], as reflected on the attached records, were the usual and customary charges of Twelve Oaks Medical Center the time and place that the services were provided."

**Amount in Dispute:** \$85,907.11

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated September 6, 2006:** "The inpatient admission was preauthorized for three days. Therefore, Provider was reimbursed for three inpatient surgical days rather than four...Provider did not seek concurrent review under rule 134.600 for the fourth day of the inpatient stay." "Provider was reimbursed for the implants at cost plus ten percent for those implants for which Provider submitted invoices."

"Reimbursement in this case should be pursuant to the standard per diem plus carve-outs reimbursement method. In this case, the surgery was elective and was not necessitated by any type of emergency. The procedure was an uncomplicated one. There is no evidence that the claimant had any co-morbidities or complications that resulted in the need for unusually extensive and costly services...there is simply no evidence that would justify application of the stop-loss exception."

**Response Submitted by:** Stone Loughlin & Swanson, L.L.P.

## SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 22, 2005 through August 26, 2005	Inpatient Hospital Services	\$85,907.11	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.600, 29 *Texas Register* 2349, effective March 14, 2004, requires preauthorization for specific treatments and services.
3. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
4. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### Explanation of Benefits

- 15-Payment adjusted because the submitted authorization number is missing, invalid, or does not apply to the billed services or provider.
- 855-024-Service is denied for lack of proof of pre-authorization.
- 45-Charges exceed your contracted/legislated fee arrangement.
- 900-021-Any Network reduction is in accordance with the network referenced above.
- W1-Workers Compensation state fee schedule adjustment.
- 855-002-Recommended allowance is in accordance with workers compensation medical fee schedule guidelines.
- W4-No additional reimbursement allowed after review of appeal/reconsideration.
- 920-002-In response to a provider inquiry, we have re-analyzed this bill and arrived at the same recommended allowance.

### Issues

1. Does the submitted documentation support that a contractual agreement issue exists in this dispute?
2. Does a preauthorization issue exist in this dispute?
3. Did the audited charges exceed \$40,000.00?
4. Did the admission in dispute involve unusually extensive services?
5. Did the admission in dispute involve unusually costly services?
6. Is the requestor entitled to additional reimbursement?

### Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission,

position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the carrier paid the services in dispute in accordance with a contracted or legislated fee arrangement. The "PPO DISCOUNT" amount on the submitted explanation of benefits denotes a "0.00" discount. The Division finds that documentation does not support that the services were discounted due to a contract; therefore, reimbursement for the services will be reviewed in accordance with applicable division rules and guidelines.
2. The insurance carrier denied reimbursement for the disputed fourth inpatient stay, based upon "15-Payment adjusted because the submitted authorization number is missing, invalid, or does not apply to the billed services or provider, and 855-024-Service is denied for lack of proof of pre-authorization."

The respondent states in the position summary that "The inpatient admission was preauthorized for three days. Therefore, Provider was reimbursed for three inpatient surgical days rather than four...Provider did not seek concurrent review under rule 134.600 for the fourth day of the inpatient stay."

28 Texas Administrative Code §134.600 (b)(1)(C), states "b) The carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (h) or (i) of this section, only when the following situations occur: (C) concurrent review of any health care listed in subsection (i) of this section was approved prior to providing the health care;

28 Texas Administrative Code §134.600(i)(1) states "The health care requiring concurrent review for an extension for previously approved services includes: (1) inpatient length of stay."

The requestor did not submit a report to support that preauthorization was obtained for the fourth inpatient stay; therefore, the Division finds that a preauthorization issue does exist in this dispute.

3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$143,077.66. The Division concludes that the total audited charges exceed \$40,000.
4. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%." This statement does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
5. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. The requestor's original position statement does not address how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was

unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).

6. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was four days; however, documentation supports that the Carrier pre-authorized a length of stay of three days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed is \$3,354.00 for the three authorized days.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
  - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$71,475.27.
  - The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Pin Steinman II	4	\$42.00/each	\$184.80
Cancellous Chp	1	\$394.00	\$433.40
Locking Caps	1	No support for cost/invoice	\$0.00
Lumbar 10mm	2	\$4,320.00/each	\$9,504.00
Synthis 6.5 x 30	1	\$26.25	\$28.88
Washers Bone	1	\$21.50	\$23.65
6.75 x 40 Screw	1	No support for cost/invoice	\$0.00
70mm Hex Rod	1	No support for cost/invoice	\$0.00
Imp Mesh	1	No support for cost/invoice	\$0.00
Imp Sealnt Pulm	2	No support for cost/invoice	\$0.00
10cc Putty	2	\$1,082.00/each	\$2,380.40
Bn Graft BMP Lg	1	\$4,990.00	\$5,489.00
TOTAL	18		\$18,044.13

- 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$329.00/unit for Vancomycin 1gm. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$21,398.13. The respondent issued payment in the amount of \$21,398.13. Based upon the documentation submitted no additional reimbursement can be recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

## **Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 1/31/2013 Date
--------------------	---	----------------------------

_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 1/31/2013 Date
--------------------	---	----------------------------

## ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**